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1760 S. TELEGRAPH ROAD • SUITE 100 • BLOOMFIELD HILLS, MI 48302.0181 • 248.334.3400 • 248.334.7757 fax • www.ocba.org

November 4, 2013

Via E-mail

The Hon. Robert P. Young, Jr.
Chief Justice
Michigan Supreme Court
3034 W. Grand Boulevard, Suite 8-500
Detroit, Michigan 48202

Re: Senate Bill 652

Dear Chief Justice Young:

We write to you to request the involvement of the State Court Administrative Office in providing data relevant to consideration of Senate Bill 652, which the Oakland County Bar Association opposes in its present form. The OCBA has advocated that action on the bill be delayed to allow for additional hearings and input from lawyers, judges, litigants and the general public who may be affected by the proposed changes.

Because the bill has proceeded rapidly through the Legislature without any apparent input from the State Court Administrative Office, it appears that crucial input from the judicial branch has been missing concerning the bill's implications and its effect on the operation of the court system. Important questions that might otherwise have been explored before or during the committee stage appear to have gone unanswered. Questions on which the State Court Administrative Office may be able to provide valuable data and information include those raised by the following aspects of Senate Bill 652:

- 1) The bill appears to shift all injunctive and equity actions against the State from Circuit Courts to the new Court of Claims in the Court of Appeals, as well as all Court of Claims cases that are currently pending in any Circuit Court. This shift could have a significant impact on the Court of Appeals, as statistics available to the State Court Administrative Office presumably would show.

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- a. How much of the four designated Court of Appeals judges' time is projected to be consumed by current and future Court of Claims matters?
 - b. What impact, if any, would the designation of four Court of Appeals judges as Court of Claims judges have on the current Court of Appeals backlog and the length of time for decisions to be rendered in the Court of Appeals?
- 2) The bill also appears to expand the jurisdiction of the new Court of Claims into matters in which claimants have a right to a jury trial. The State Court Administrative Office should be able to assess the impact of jury trials on the operation of the Court of Appeals.
 - a. What would the impact of jury trials be on the case scheduling and docketing process of the Court of Appeals?
 - b. What physical modifications to Court of Appeals locations would be required to facilitate juries and jury trials?
- 3) With the understanding that any legislative reform of court operations should include consideration of convenience to the public, the State Court Administrative Office presumably has data that would be helpful in assessing whether the bill as written would further this goal.
 - a. What is the geographic distribution of the origin of Court of Claims cases, as the jurisdiction of the Court of Claims is presently defined, and as it would be defined under SB 652?
 - b. With SB 652 permitting Court of Appeals judges from as few as two Court of Appeals districts to comprise the entire bench of the Court of Claims, are there other ways to reconstitute and operate the Court of Claims that would more effectively address considerations of public convenience?
- 4) Currently, Court of Claims judges have authority to consolidate parallel cases pending in the Court of Claims and Circuit Courts by having the circuit judge in the parallel case sit as a judge of the Court of Claims. SB 652 would eliminate that and require the consent of all parties for such consolidation to occur.
 - a. What does the State Court Administrative Office data tell us about how often cases are currently consolidated in the way that would be permissible only by consent of all parties under the new bill?
 - b. What is the projected impact on the caseload of Circuit Court and the Court of Claims, and the projected impact on cost to the parties, including the state, in circumstances when parties do not consent to consolidation?
- 5) The bill suggests that an attorney special master rather than a judge could hear damage and injunctive claims.
 - a. Is the State Court Administrative Office aware of other jurisdictions that use special masters in such circumstances?

- b. How are the costs of a special master to be assessed, and can the State Court Administrative Office provide an estimate of what such costs might be?

The changes to the state court system that proposed SB 652 would appear to effectuate are so substantial, the ambiguities so significant, and the speed with which this legislation is progressing so unusual, that there are likely other equally important questions to be explored in addition to those identified above.

An appropriate individual from the State Court Administrative Office could assist in providing data to the Legislature and the Governor to help avoid pitfalls and unintended consequences as improvements are considered for the Court of Claims process. Providing information available from the State Court Administrative Office would provide a means for the judicial branch to be included in this legislative effort to change the operation of the state court system.

Thank you for your consideration.

Sincerely,



James G. Derian
Oakland County Bar Association, President

cc: Justices, Michigan Supreme Court
William Murphy, Chief Judge, Court of Appeals
Judges, Court of Appeals
Officers of Michigan Judges Association
Bill sponsor and co-sponsors
House Government Operations Committee members
Senate and House Judiciary Committee members
Governor Rick Snyder
Michael F. Gadola, Esq.
Brian D. Einhorn, Esq., State Bar of Michigan President
Janet Welch, State Bar of Michigan Executive Director